

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In the Matter of	)
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Amendment of Part 90 of the	) PR Docket No. 93-144
Commission's Rules to Facilitate	) <b>RM-8117, RM-8030</b>
<b>Future Development of SMR Systems</b>	) <b>RM-8029</b>
in the 800 MHz Frequency Band	)
Implementation of Sections 3(n) and 322 of the Communications Act	) GN Docket No. 93-252
Regulatory Treatment of Mobile Services	
Implementation of Section 309(j) of the Communications Act Competitive Bidding	PP Docket No. 93-253

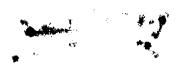
**To:** The Commission

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#### COMMENTS OF E.F. JOHNSON COMPANY

E.F. Johnson Company "E.F. Johnson" or the "Company"), by its attorneys and pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Comments responsive to the *Second Further Notice of Proposed Rule Making* ("Second Further Notice") in the above referenced proceeding designed to establish a new licensing scheme for 800 MHz specialized mobile radio ("SMR") systems.<sup>1</sup>

Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Second Further Notice of Proposed Rule Making, FCC 95-501, adopted December 15, 1995. By an Order issued in this proceeding on January 16, 1996, the FCC extended the comment and reply comment deadlines until February 15 and March 1, respectively (DA 96-18).



## I. INTRODUCTION

E.F. Johnson is a leading designer and manufacturer of radio communications and specialty communications products for commercial and public safety use. Founded over seventy years ago as an electronics components manufacturer, E.F. Johnson entered the radio communications market in the late 1940's and is one of the three largest providers of land mobile radio systems in the United States. It produces base stations, vehicular mounted and portable transmitters that operate in, among other portions of the spectrum, the 800 MHz band. E.F. Johnson developed the LTR® signaling protocol, which is used by many manufacturers that produce 800 MHz trunked facilities.

In this proceeding, the Commission proposes additional rules to facilitate the licensing of 800 MHz SMR spectrum on a geographic area, rather than site specific basis. Simultaneous with the release of the *Second Further Notice*, the FCC adopted a *First Report and Order* in this proceeding, in which it enacted licensing and service rules governing the "upper" 200 SMR channels in the 800 MHz band. In the *Second Further Notice*, the Commission seeks comments on: 1) the disaggregation and partitioning of channel blocks on the upper 200 channels; 2) certain aspects of mandatory relocation of licensees currently authorized to use the upper 200 channels; 3) licensing of the "lower" 80 SMR channels and the General Category channels in the 800 MHz band; and 4) the competitive bidding rules that will apply to the future licensing of the lower 80 and General Category channels.

E.F. Johnson is a significant supplier of equipment to the 800 MHz SMR industry. Many of its 600 dealers nationwide own and operate 800 MHz SMR systems. Accordingly, the

While the Second Further Notice addresses other issues as well, the Company restricts its comments to those matters specified.

Commission's proposals in this proceeding will have an effect on the company's ability to sell its products, and on its dealers' ability to continue operating their systems. E.F. Johnson is pleased, therefore, to have this opportunity to submit the following comments.

#### II. COMMENTS

# A. Disaggregation and Partitioning

The Commission proposes to permit Economic Area ("EA") licenses to be disagregated (spectrum based division) and partitioned (geographic based division). Such disaggregation or partitioning could occur before or after the auction. The Commission seeks comments concerning whether, and how much, spectrum EA licensees should be required to retain. The Commission also seeks comments on whether the EA licensee should be required to satisfy construction and coverage requirements prior to disaggregation or partitioning.

E.F. Johnson believes that the Commission should encourage disaggregation and partitioning. The Company has long contended that SMR service is fundamentally local in nature, and is most effectively offered by local businesses. Accordingly, it urges the Commission to adopt measures that will encourage EA licensees to disaggregate and partition their authorizations, so that local SMR operators will have an opportunity to provide service using channels licensed to the EA operator. In particular, the Company disagrees with a requirement that an EA licensee be prohibited from disaggregating or partitioning until such time as it meets coverage and construction requirements. In order to foster disaggregation and partitioning, the Commission should also not require an EA licensee to retain any particular portion of its channels or geography.

# B. Mandatory Relocation

The Commission proposes that incumbent licensees be able to compel all EA licensees, in the spectrum block in which the incumbent licensee operates, to negotiate simultaneously. E.F. Johnson strongly supports this proposal. Requiring incumbent licensees to relocate will be severely disruptive to ongoing businesses. Accordingly, incumbent licensees should not be required to negotiate, on a piece-meal basis, with different EA licensees. If EA licensees cannot agree on a consolidated approach to retune an incumbent licensee's system, either: 1) the incumbent licensee should not be required to retune; or 2) the incumbent licensee could be required to be retuned only if one of the EA licensees can retune the incumbent licensee's entire system. In the latter instance, the EA licensee that retunes the entire system (and secures the use of channels for which other EA licensees are authorized), the first EA licensee would stand in the position of the incumbent licensee.

The Commission encourages EA and incumbent licensees to use the FCC's alternative dispute resolution ("ADR") mechanism to resolve instances in which the two parties disagree in the context of relocation negotiations. E.F. Johnson strongly supports this proposal. However, incumbent licensees should not be required to wait until the end of the mandatory relocation period in order to invoke this alternative. In order to foster business certainty, many incumbent licensees will seek to complete the retuning process early in the relocation process. It may become apparent that an EA licensee, in the opinion of the incumbent licensee, is unwilling to relocate the incumbent to "comparable facilities" as that term is defined by the Commission. In that instance, the licensee should be able to invoke ADR before the conclusion of the mandatory relocation period.

E.F. Johnson prefers for the FCC to be designated as the arbiter for disputes between EA and incumbent licensees. In particularly does not wish for trade associations to act in this capacity. While the Company appreciates that those associations would attempt to act neutrally, the opportunity for favoritism to members is too great. Independently administered ADR procedures should be employed.

The Commission proposes that an incumbent which receives the following would have comparable facilities provided by the EA licensee: 1) the same number of channels with the same bandwidth; 2) relocation of the entire system, not just those frequencies desired by a particular EA licensee; and 3) once relocated, the licensee would have a 40 dBu service contour that encompasses all of the territory covered by the 40 dBu contour of its original system. E.F. Johnson strongly supports the Commission's direction that the facilities onto which the incumbent licensees are retuned demonstrate at least those three enumerated characteristics.

While E.F. Johnson does not object to the Commission's characterization of comparable facilities, it believes that the FCC has not adequately protected incumbent licensees during the mandatory relocation process.<sup>3</sup> That process will necessarily be disruptive. Unless the Commission provides to the contrary, EA licensees may be able to dictate the physical process by which relocation occurs, potentially harming a licensee's relationship with its customers. To remedy this problem, incumbent licensees should have complete control over the relocation process. Part of that control should be the option of requiring that all costs for relocation be placed in escrow in advance of the process.<sup>4</sup> The incumbent licensee can then complete the

E.F. Johnson is unconcerned about the relationship between the incumbent licensee and the EA licensee during the voluntary relocation period, during which the incumbent licensee can negotiate the most attractive terms possible.

The amount of the funds that would be placed in escrow would be agreed in advance, based upon the equipment necessary to provide the incumbent licensee with "comparable facilities."

relocation process as its business sense dictates, so long as the relocation process is complete by the end of the mandatory period. An EA licensee unwilling to allow the incumbent licensee to control the relocation process in this or any other comparable fashion should be considered to be not acting in good faith.

# C. Licensing of Lower 80 and General Category Channels

The Commission proposes to use geographic, rather than site specific licenses in the lower 80 and General Category channels. The Commission also recommends that the channels be licensed on an EA basis. The FCC would license the lower 80 channels in five channel blocks and envisions licensing the General Category channels in blocks of 120, 20 and 10 channels. The Commission proposes coverage requirements for the lower 80 and General Category channels similar to those that apply to the upper 200 channel EA licensees. The Commission proposes no mandatory relocation within the lower 80 and General Category channels. Incumbent licensees would be permitted to continue operations and modify their facilities, so long as their 22 dBu interference contour remained the same. The Commission specifically seeks comments on the treatment and possible relocation of non-SMR licensees in the lower 80 and General Category.

E.F. Johnson believes that the FCC has not adequately protected non-SMR licensees in its proposals for the lower 80 and General Category channels. These licensees should have the absolute right to continue to operate as they do today. The Company strongly supports, therefore, the right of incumbent licensees to relocate their facilities, so long as their 22 dBu interference contour remains the same. The Commission should not, however, consider relocation of incumbent licensees located in the lower 80 and General Category channels. To propose relocation is to ignore the fact that there are simply no options for relocating these licensees

within the 800 MHz band. If these licensees remain, they may wish to secure the EA license for the geographic area in which they operate.<sup>5</sup> Once they obtain such a geographic license, they should not be required to comply with the same coverage and construction requirements as EA licensees. The non-SMR incumbent systems are not commercial. Their systems are designed to meet their internal communications needs. Because coverage requirements are designed to ensure that commercial systems employ the spectrum efficiently, they should not apply to EA licenses held by incumbent non-SMR licensees.

If incumbent SMR operators obtain the EA license for the channels on which they are currently licensed, they should be presumed to meet any coverage and construction requirements if they have already constructed their facilities and are providing service to the public, or have become operational, depending on their service category. Market forces will ensure that these channels, if they are already constructed within the EA, will be most intensely employed in the EA. If an EA can economically and spectrally support reuse of a channel that is already constructed, either the incumbent/EA licensee will construct additional sites or will contract its rights to do so to other entities.

# D. Regulatory Classification of Lower 80 and General Category Channels

The Commission proposes to classify all geographic area licensees on the lower 80 and General Category channels presumptively as Commercial Mobile Radio Service ("CMRS") licensees. The presumption would be rebuttable for geographic licensees which do not intend to provide interconnection to the public.

As noted below, the FCC should not use auctions to license the lower 80 and General Category channels in circumstances where the incumbent licensee seeks the EA license.

As noted above, E.F. Johnson recommends that non-SMR licensees be permitted to retain their current authorizations and be eligible for EA licenses on the channels for which they are currently licensed. If they secure such EA license, they should be considered Private Mobile Radio Service ("PMRS") licensees.

# E. Competitive Bidding Issues for Lower 80 and General Category Channels

The Commission proposes competitive bidding rules for the lower 80 and General Category channels. It would award the lower 80 channels in 16 five channel blocks within each EA, while the General Category channels would be licensed in blocks of 120, 20 and 10 channels.

The proposal to auction EA licenses for the lower 80 and General Category channels ignores the substantial presence of incumbent licensees on those frequencies. Instead of licensing these channels by auction in the first instance, E.F. Johnson recommends that the Commission allow incumbent because to secure, on a channel-by-channel basis, licenses for the EA on the channel for which they are licensed. If there is more than one incumbent licensees licensed on the channel in the DFA, the multiple channel licensees should be permitted to apply jointly for an EA based license

Only after incumbent licensees are permitted an opportunity to secure EA licenses should the Commission conduct an auction for the remaining spectrum. The channels left for auction will, therefore, be those: 1) where there were no incumbent licensees on a channel; or 2) there were one or more incumbent licensees that did not, as a single applicant, request an EA license for the channel. Any auction for a block of channels within an EA (regardless of whether the

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block contained 5, 10, 20 or 120 channels) would reflect the deletion from that block of any channel previously licensed on an EA basis to the incumbent licensee(s).

The Commission proposes to generally follow the processing and procedural rules established in prior auctions. The Company expects that many small businesses will seek the use of General Category or lower 80 channels to expand their capacity to serve customers.

Accordingly, if auctions are employed, the Commission should structure the auction rules with those entities in mind. For example, the Commission should dramatically reduce or eliminate the minimum bid increments for this auction. The minimum bid increments unnecessarily inhibit applicants from seeking to place a higher bid than the standing high bid. Further, the rules governing auction activity are complex and impose a barrier to entry for many small businesses. These regulations should be simplified.

E.F. Johnson agrees with the Commission's conclusion that the lower 80 and General Category channels should be designated an entrepreneurs block, by limiting participation in the auction to entities that fall below a specified level of gross revenues and assets. However, the Company believes that is fundamentally unfair to prohibit entities from participating in such an auction if they already hold channels in an EA. Accordingly, participation in the auction should limited to entrepreneurs and incumbent licensees.

#### III. CONCLUSIONS

The Commission's actions in this proceeding should be designed to protect incumbent licensees, who are currently acting in the public interest by serving customers throughout the country. In particular, the FCC should: encourage EA licensees to partition and disaggregate their authorizations; ensure that incumbent licensees retain adequate control of their operations in

the relocation process; provide an opportunity for licensees in the lower 80 and General Category

channels to become EA licensees without participating in the auction process; forbear from

imposing coverage requirements on incumbent licensees in the lower 80 and General Category

channels that become EA licensees; and limit participation in any auction for lower 80 and

General Category channels to incumbent licensees and small businesses.

WHEREFORE, THE PREMISES CONSIDERED, E.F. Johnson Company hereby

submits the foregoing Comments and asks that the Federal Communications Commission act in a

manner consistent with the views expressed herein.

Respectfully submitted

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